

¹ 5 U.S.C. § 8101 *et seq.*

FACTUAL HISTORY

On September 23, 1994 appellant, then a 34-year-old data transcriber, filed an occupational disease claim (Form CA-2) alleging that she sustained pain extending from her thumbs to her wrists causally related to factors of her federal employment. OWCP accepted the claim, assigned OWCP File No. xxxxxx976, for tenosynovitis of the hands and lesion of the right radial nerve.²

After sustaining intermittent periods of disability, appellant returned to work as a security clerk on September 23, 2002. By decision dated December 27, 2002, under OWCP File No. xxxxxx992, OWCP reduced her wage-loss compensation effective September 23, 2002 after finding the position of security clerk fairly and reasonably represented her wage-earning capacity. Appellant subsequently underwent an OWCP-authorized lumbar laminectomy and fusion at L4-5. OWCP paid her wage-loss compensation on the periodic rolls post surgery until March 5, 2016 under OWCP File No. xxxxxx992.

On April 4, 2016 appellant returned to work as a full-time lead contract specialist for a different federal agency.³ The physical requirements of the position were “primarily sedentary in nature.”

On December 28, 2018 Dr. Brett C. Puckett, a Board-certified orthopedic surgeon, performed a neuroplasty of the right radial nerve at the elbow and an incision of the extensor tendon sheath of the first dorsal compartment of the right wrist. On June 20, 2019 he performed an incision of the extensor tendon sheath of the left wrist and neuroplasty of the radial nerve at the left elbow without transposition.

On July 22, 2019 appellant returned to full-duty work as a lead contract specialist.

Electrodiagnostic testing of the upper extremities performed on July 1, 2020 yielded normal results.

In a report dated July 13, 2020, Dr. Puckett evaluated appellant for bilateral hand pain and numbness of all fingers on the left hand and the middle, ring, and little fingers on the right hand. He noted that bending, lifting, and movement increased her symptoms. Dr. Puckett discussed appellant’s history of wrist surgeries and diagnosed bilateral hand pain and bilateral radial nerve lesions. He opined that she had indefinite work restrictions. In a note of even date, Dr. Puckett indicated that appellant could return to work with no pushing, pulling, or lifting with both wrists and elbows. In a work capacity evaluation (Form OWCP-5c) of the same date, he found that she could work full time with restrictions of no repetitive movement of the bilateral wrists and elbows, and no pushing, pulling, or lifting.

² OWCP previously accepted that on February 17, 1993 appellant sustained lumbar sprain, lumbar radiculopathy, lumbar spondylosis with myelopathy, other psychogenic pain, adhesive capsulitis of the right shoulder and lumbago when she tangled her foot in a cord and stumbled and caught herself under OWCP File No. xxxxxx992. It administratively combined OWCP File Nos. xxxxxx976 and xxxxxx992, with the latter serving as the master file.

³ On June 16, 2017 appellant underwent a revision of the L4-5 laminectomy and fusion.

In a confirmation of request for reasonable accommodation form dated July 15, 2020, appellant advised that she could no longer use her hands for administrative duties due to the recent diagnosis of her hand conditions.

In an e-mail dated July 15, 2020, appellant's supervisor acknowledged receipt of her request for reasonable accommodation and advised that there were no duties available within her restrictions.

On July 21, 2020 appellant filed a claim for compensation (Form CA-7) for disability from work for the period July 23 to 31, 2020.

On August 5, 2020 Dr. Douglas Boler, who specializes in pain management, indicated that he was treating appellant for bilateral hand pain and low back pain with radiculopathy. He advised that she required a pain cream.

On August 12, 2020 appellant filed a Form CA-7 claim for wage-loss compensation due to disability from work for the period August 4 to 14, 2020 causally related to her accepted employment injury.

In an August 14, 2020 letter, appellant requested that OWCP stop her schedule award compensation and place her on the periodic rolls.

In a development letter dated August 14, 2020, OWCP advised appellant that it had received her October 13, 2020 Form CA-7 concerning wage-loss compensation from July 23 through 30, 2020. It noted that in the July 13, 2020 report, her physician had primarily found hand pain, which it indicated was not a valid diagnosis, and failed to include medical rationale explaining the need for her work restrictions. OWCP requested that appellant provide reasoned medical evidence supporting that she was unable to work due to her accepted condition. It afforded her 30 days to submit the requested information.

Subsequently, OWCP received a July 27, 2020 e-mail from appellant, advising that her pain had not stopped and that she had undergone multiple surgeries. She indicated that typing made surgery more likely.

On August 17, 2020 appellant filed a Form CA-7 claiming wage-loss compensation due to disability from work for the period August 4 to 14, 2020.

In a development letter dated August 26, 2020, OWCP again requested that appellant submit a comprehensive report supported by objective findings explaining why she was unable to perform the duties of her position as of July 23, 2020. It afforded her 30 days to submit additional evidence.

OWCP subsequently received a Form CA-7 from appellant claiming wage-loss compensation due to disability from work for the period August 17 to 28, 2020.

On September 23, 2020 Dr. Puckett indicated that he had completed the July 13, 2020 disability form in error, and that it should have been identical to the November 25, 2019 form. He

advised that the form should have found that appellant had “reached maximum medical improvement and was to return back to work with no restrictions.”

In a statement dated September 24, 2020, appellant advised that her supervisor had initially approved leave without pay (LWOP) based on Dr. Puckett’s July 13, 2020 work restrictions. She used approved LWOP from July 23 to August 28, 2020. Appellant asserted that she had to retire on September 7, 2020 as there was no work within her restrictions.

By decision dated September 30, 2020, OWCP denied appellant’s claim for disability from work commencing July 23, 2020 causally related to her accepted employment injury.

On October 5, 2020 appellant requested an oral hearing before a representative of OWCP’s Branch of Hearings and Review.

In a progress report dated October 14, 2020, Dr. Puckett evaluated appellant for bilateral wrist pain that worsened with activity. He diagnosed bilateral wrist and hand pain.

A telephonic hearing was held on December 30, 2020.

In a January 13, 2021 progress report, Dr. Puckett reviewed appellant’s complaints of bilateral wrist pain. He diagnosed bilateral wrist pain and bilateral radial styloid tenosynovitis. In a Form OWCP-5c of even date, Dr. Puckett opined that appellant could perform her usual employment without restrictions.

On January 21, 2021 Dr. Boler indicated that he was treating appellant for bilateral hand pain and low back pain with radiculopathy. He asserted that she required pain cream for her symptoms of neuropathic and muscular pain.

On January 22, 2021 Dr. Puckett advised that his July 13, 2020 report had incorrect diagnosis codes, and that the proper diagnosis was “a sequela of her bilateral radial tunnel syndrome and bilateral wrist de Quervain’s tenosynovitis despite normal [n]erve conduction study findings.” He noted that appellant had cooperated with her treatment in her OWCP claim.

By decision dated February 4, 2021, OWCP’s hearing representative affirmed the September 30, 2020 decision.

On February 8, 2021 appellant requested reconsideration. She related that she had complied with her physician’s recommendations and requested accommodation, but had to retire. Appellant resubmitted Dr. Puckett’s January 22, 2021 letter. She also resubmitted the July 15, 2021 confirmation of request for reasonable accommodation form and the July 13, 2020 reports from Dr. Puckett.

In a progress report dated March 11, 2021, Dr. Puckett evaluated appellant for left elbow pain. He diagnosed left elbow pain and lateral epicondylitis of the left elbow. In a Form OWCP-5c of even date, Dr. Puckett found that appellant could perform her usual employment without restrictions.

By decision dated May 7, 2021, OWCP denied modification of its February 4, 2021 decision.

On June 1, 2021 appellant requested reconsideration. She noted that OWCP had not discussed her October 11, 2000 right hand surgery. Appellant asserted that it was her supervisor rather than her physician who took her off work. She questioned why she had not received vocational rehabilitation and advised that OWCP's procedures indicated that schedule award compensation was not for living expenses.

By decision dated June 15, 2021, OWCP denied appellant's request for reconsideration of the merits of her claim under 5 U.S.C. § 8128(a).

LEGAL PRECEDENT -- ISSUE 1

An employee seeking benefits under FECA⁴ has the burden of proof to establish the essential elements of his or her claim, including that any disability or specific condition for which compensation is claimed is causally related to the employment injury.⁵ For each period of disability claimed, the employee has the burden of proof to establish that he or she was disabled from work as a result of the accepted employment injury.⁶ Whether a particular injury causes an employee to become disabled for work, and the duration of that disability, are medical issues that must be proved by a preponderance of probative and reliable medical opinion evidence.⁷

Under FECA the term disability means incapacity, because of an employment injury, to earn the wages that the employee was receiving at the time of injury.⁸ Disability is, thus, not synonymous with physical impairment which may or may not result in an incapacity to earn wages.⁹ An employee who has a physical impairment causally related to his or her federal employment, but who nonetheless has the capacity to earn the wages that he or she was receiving at the time of injury, has no disability as that term is used in FECA.¹⁰

Causal relationship is a medical issue and the medical evidence required to establish causal relationship is rationalized medical evidence.¹¹ Rationalized medical evidence is medical evidence which includes a physician's detailed medical opinion on the issue of whether there is a causal relationship between the claimant's claimed disability and the accepted employment injury. The opinion of the physician must be based on a complete factual and medical background of the

⁴ *Supra* note 1.

⁵ *See D.S.*, Docket No. 20-0638 (issued November 17, 2020); *Kathryn Haggerty*, 45 ECAB 383 (1994).

⁶ *M.C.*, Docket No. 18-0919 (issued October 18, 2018).

⁷ *See S.C.*, Docket No. 20-0856 (issued August 26, 2021); *K.C.*, Docket No. 17-1612 (issued October 16, 2018).

⁸ 20 C.F.R. § 10.5(f); *S.T.*, Docket No. 18-0412 (issued October 22, 2018).

⁹ *See L.W.*, Docket No. 17-1685 (issued October 9, 2018).

¹⁰ *See M.W.*, Docket No. 20-0722 (issued April 26, 2021); *D.G.*, Docket No. 18-0597 (issued October 3, 2018).

¹¹ *S.C.*, Docket No. 20-0856 (issued August 26, 2021); *J.M.*, Docket No. 19-0478 (issued August 9, 2019).

claimant, must be one of reasonable medical certainty, and must be supported by medical rationale explaining the nature of the relationship between the accepted employment injury and the claimed period of disability.¹²

The Board will not require OWCP to pay compensation for disability in the absence of medical evidence directly addressing the specific dates of disability for which compensation is claimed. To do so, would essentially allow an employee to self-certify their disability and entitlement to compensation.¹³

ANALYSIS -- ISSUE 1

The Board finds that appellant has not met her burden of proof to establish disability from work commencing July 23, 2020 causally related to her accepted employment injury.

OWCP accepted appellant's September 1994 occupational disease claim for bilateral tenosynovitis of the hands and a right radial nerve lesion. In April 2016 appellant returned to full-time employment in a primarily sedentary position as a lead contact specialist for another employing establishment. She stopped work again on July 23, 2020 after her physician increased her work restrictions and her supervisor advised that she had no work available within her new restrictions. Appellant filed claims for wage-loss compensation due to disability from work.

On July 13, 2020 Dr. Puckett discussed appellant's complaints of hand pain and some finger numbness bilaterally aggravated by bending, lifting, and other movement. He diagnosed bilateral hand pain and bilateral lesions of the radial nerves. Dr. Puckett opined that appellant could return to work full time without pushing, pulling, lifting, or performing repetitive movement with her elbows and wrists. On January 22, 2021 he advised that the appropriate diagnoses was a sequela of bilateral radial tunnel syndrome and bilateral wrist de Quervain's tenosynovitis. Dr. Puckett noted that appellant had been compliant in the treatment of her claim with OWCP. He did not, however, provide an opinion on whether appellant was disabled from work during the claimed period. The Board has held that medical evidence that does not offer an opinion regarding the cause of an employee's condition or disability is of no probative value on the issue of causal relationship.¹⁴

The remaining evidence of record negates disability from work during the claimed period. In September 23, 2020 and January 13 and March 11, 2021 reports, Dr. Puckett diagnosed bilateral wrist pain and bilateral radial styloid tenosynovitis and, in accompanying Form OWCP-5c work capacity evaluations of even date, found that she could perform her usual employment without restrictions. As he negated that appellant was disabled from her regular employment duties, his

¹² *R.H.*, Docket No. 18-1382 (issued February 14, 2019).

¹³ *See D.P.*, Docket No. 18-1439 (issued April 30, 2020); *A.W.*, Docket No. 18-0589 (issued May 14, 2019).

¹⁴ *M.N.*, Docket No. 18-0741 (issued April 2, 2020); *L.B.*, Docket No. 18-0533 (issued August 27, 2018); *D.K.*, Docket No. 17-1549 (issued July 6, 2018).

reports are insufficient to meet her burden of proof to establish disability from work beginning July 23, 2020.¹⁵

On August 5, 2020 and January 21, 2021 Dr. Boler advised that he was treating appellant for bilateral pain in her hands and low back pain with radiculopathy. On October 14, 2020 Dr. Puckett diagnosed bilateral wrist and hand pain. Neither physician, however, addressed the issue of disability from employment. The Board has held that medical evidence that does not address whether a period of disability is due to an accepted employment condition is of no probative value and insufficient to establish a claim.¹⁶

Appellant submitted electrodiagnostic testing dated July 1, 2020. However, diagnostic studies, standing alone, lack probative value as they do not address whether the accepted employment injury caused appellant to be disabled from work during the claimed periods.¹⁷

As the medical evidence of record does not contain a rationalized opinion establishing causal relationship between appellant's claimed disability and her accepted employment injury, the Board finds that she has not met her burden of proof.¹⁸

Appellant may submit new evidence or argument with a written request for reconsideration to OWCP within one year of this merit decision, pursuant to 5 U.S.C. § 8128 and 20 C.F.R. §§ 10.605 through 10.607.

LEGAL PRECEDENT -- ISSUE 2

Section 8128(a) of FECA vests OWCP with discretionary authority to determine whether to review an award for or against compensation. The Secretary of Labor may review an award for or against compensation at any time on his own motion or on application.¹⁹

To require OWCP to reopen a case for merit review pursuant to FECA, the claimant must provide evidence or an argument which: (1) shows that OWCP erroneously applied or interpreted a specific point of law; (2) advances a relevant legal argument not previously considered by OWCP; or (3) constitutes relevant and pertinent new evidence not previously considered by OWCP.²⁰

¹⁵ *M.J.*, Docket No. 19-1287 (issued January 13, 2020); *see also R.M.*, Docket No. 18-1067 (issued May 7, 2020); *M.H.*, Docket No. 19-1287 (issued January 13, 2020).

¹⁶ *See C.P.*, Docket No. 19-1716 (issued March 11, 2020); *C.R.*, Docket No. 19-1427 (issued January 3, 2020); *L.B.*, *supra* note 14; *D.K.*, *supra* note 14.

¹⁷ *C.S.*, Docket No. 19-1279 (issued December 30, 2019).

¹⁸ *M.N.*, *supra* note 14; *J.W.*, Docket No. 19-1688 (issued March 18, 2020).

¹⁹ 5 U.S.C. § 8128(a); *see L.D.*, Docket No. 18-1468 (issued February 11, 2019); *see also V.P.*, Docket No. 17-1287 (issued October 10, 2017); *D.L.*, Docket No. 09-1549 (issued February 23, 2010); *W.C.*, 59 ECAB 372 (2008).

²⁰ 20 C.F.R. § 10.606(b)(3); *see L.D.*, *id.*; *see also L.G.*, Docket No. 09-1517 (issued March 3, 2010); *C.N.*, Docket No. 08-1569 (issued December 9, 2008).

A request for reconsideration must be received by OWCP within one year of the date of OWCP's decision for which review is sought.²¹ If it chooses to grant reconsideration, it reopens and reviews the case on its merits.²² If the request is timely, but fails to meet at least one of the requirements for reconsideration, OWCP will deny the request for reconsideration without reopening the case for review on the merits.²³

ANALYSIS -- ISSUE 2

The Board finds that OWCP properly denied appellant's request for reconsideration of the merits of her claim pursuant to 5 U.S.C. § 8128(a).

Appellant has not established that OWCP erroneously applied or interpreted a specific point of law, or advanced a relevant legal argument not previously considered by OWCP. In her request for reconsideration, she maintained that her supervisor rather than her physician took her off work and questioned why she did not receive vocational rehabilitation. Appellant indicated that schedule award compensation was not for living expenses and maintained that OWCP had failed to reference a prior surgery. The underlying issue, however, is whether she has submitted medical evidence sufficient to meet her burden of proof to establish disability from work commencing July 23, 2020. As this issue is medical in nature, it can only be resolved through the submission of medical evidence.²⁴ The Board has held that the submission of evidence or argument, which does not address the particular issue involved, does not constitute a basis for reopening a case.²⁵ Accordingly, the Board finds that appellant is not entitled to a review of the merits based on either the first or second requirement under 20 C.F.R. § 10.606(b)(3).

Appellant did not submit any relevant and pertinent new evidence not previously considered. Thus, she is not entitled to a merit review based on the third requirement under section 10.606(b)(3).²⁶

²¹ *Id.* at § 10.607(a). The one-year period begins on the next day after the date of the original contested decision. For merit decisions issued on or after August 29, 2011, a request for reconsideration must be received by OWCP within one year of OWCP's decision for which review is sought. Federal (FECA) Procedure Manual, Part 2 -- Claims, *Reconsiderations*, Chapter 2.1602.4 (September 2020). Timeliness is determined by the document receipt date of the request for reconsideration as indicated by the received date in the Integrated Federal Employees' Compensation System (iFECS). *Id.* at Chapter 2.1602.4b.

²² *Id.* at § 10.608(a); *see also* *F.V.*, Docket No. 18-0239 (issued May 8, 2020); *M.S.*, 59 ECAB 231 (2007).

²³ *Id.* at § 10.608(b); *Y.K.*, Docket No. 18-1167 (issued April 2, 2020); *E.R.*, Docket No. 09-1655 (issued March 18, 2010).

²⁴ *D.H.*, Docket No. 19-1308 (issued January 7, 2020).

²⁵ *See* *A.W.*, Docket No. 21-0298 (issued August 26, 2021). *J.D.*, Docket No. 19-1757 (issued April 15, 2020); *Edward Matthew Diekemper*, 31 ECAB 224 (1979).

²⁶ 20 C.F.R. § 10.606(b)(3)(iii); *T.W.*, Docket No. 18-0821 (issued January 13, 2020).

The Board, accordingly, finds that appellant did not meet any of the requirements of 20 C.F.R. § 10.606(b)(3). Pursuant to 20 C.F.R. § 10.608, OWCP properly denied merit review.²⁷

CONCLUSION

The Board finds that appellant has not met her burden of proof to establish disability from work commencing July 23, 2020 causally related to her accepted employment injury. The Board further finds that OWCP properly denied appellant's request for reconsideration of the merits of her claim pursuant to 5 U.S.C. § 8128(a).

ORDER

IT IS HEREBY ORDERED THAT the February 4, May 7, and June 15, 2021 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: April 20, 2022
Washington, DC

Alec J. Koromilas, Chief Judge
Employees' Compensation Appeals Board

Patricia H. Fitzgerald, Deputy Chief Judge
Employees' Compensation Appeals Board

Valerie D. Evans-Harrell, Alternate Judge
Employees' Compensation Appeals Board

²⁷ *T.G.*, Docket No. 20-0329 (issued October 19, 2020); *C.C.*, Docket No. 17-0043 (issued June 15, 2018).